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ARIZONA ATTORNEY GENERAL

DARRELL F. SMITH, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

September 15, 1965

DEPARTMENT OF LAW LETTER OPINION NO. 65-19 (R-133)

NO. 1 REQUESTED BY: The Honorable Sarah Folsom
Superintendent of Public Instruction

QUESTION: What effect, if any, does the Voting Rights Act of 1965 (P.L. 89-110) have on local district school board elections?

ANSWER: See body of opinion.

NO. 2 REQUESTED BY: The Honorable D. L. Greer
Apache County Attorney

QUESTION: May the present registration form used in Apache County still be used in view of the passage of the Voting Rights Act of 1965?

ANSWER: Yes.

NO. 3 REQUESTED BY: The Honorable Richard J. Riley
Cochise County Attorney

The Honorable David S. Ellsworth
Yuma County Attorney

QUESTION: Does the Voting Rights Act of 1965 (P.L. 89-110) effect voter registration in Arizona?

ANSWER: Yes.

The Voting Rights Act of 1965 (P.L. 89-110) was passed to enforce the provisions of the 15th Amendment of the United States Constitution, which reads as follows:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

In the spirit of the amendment, Congress has set forth the purpose of the Act, in Section 2, in these words:

"No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any state or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."

Following Section 2 there are seventeen additional sections of which only one, Section 4, has immediate applicability and effect upon our state election laws and the specific questions asked.

Section 4, generally, provides that a citizen's right to vote may not be denied by his failure to comply with any "test or device". This prohibition clearly stated in Section 4(a), does not automatically apply to all states, or subdivisions of the states, but requires a prior determination to be made by designated officials. In Subsection 4(b) this requirement is set forth as follows:

"The provisions of subsection (a) shall apply to a state which (1) the Attorney

General determines maintained on November 1, 1964, any test or device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November, 1964."

The express intention of Congress is that Section 4(a) only apply to a federal, state or local election after Section 4(b) facts are ascertained by the Attorney General and Director of the Census. It follows that these provisions are not self-executing and not applicable to state election laws until the determination has been made and communicated by publication in the Federal Register (Section 4[b]). Our immediate information is that such a determination has not been made concerning Arizona.

The only provision of the Act which has immediate application appears to be Subsection 4(e) (1) and (2), which by express terms is also enacted under authority of the 14th Amendment of the United States Constitution. This Subsection makes a demonstrated sixth grade education presumption of ability to read, write, understand or interpret any matter in the English language. Pertinent parts of the Subsection are as follows:

"4(e) (2) No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominate classroom language was other than English, shall be denied the right to vote in any Federal, State or local election because of his inability to read, write, understand or interpret any matter in the English language...."

In its first regular session of 1965, the Twenty-Seventh Legislature amended A.R.S. §16-921, entitled "Grounds for Challenging Voter", by removing the requirement that a voter be able to read and understand the Constitution. The only element remaining in the nature of a test or device is the requirement that the voter be able to write his name, unless prevented from doing so by physical disability. In addition to this is A.R.S. §16-101 A(4), which is entitled: "Qualification of Electors" and reads:

"Every resident of the state is qualified to become an elector and may register to vote at all elections authorized by law if he:

* * *

"4. Is able to read the Constitution of the United States in the English language in a manner showing that he is neither prompted nor reciting from memory, unless prevented from so doing by physical disability.

"5. Is able to write his name, unless prevented from doing so by physical disability."

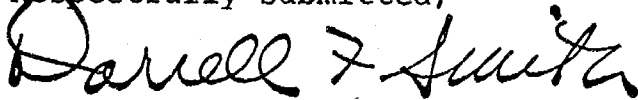
It seems clear to this office that the aforequoted Section 4(e)(2) is intended by Congress to have immediate effect and that said section must be read to modify both A.R.S. Sections 16-101 and 16-921 to the effect that where a person can demonstrate that he or she has gone through the sixth grade, in a school as specified heretofore, such demonstration takes the place of Subsections 4 and 5 of A.R.S. §16-101 A and Subsection 7 of A.R.S. §16-921.

Our answers to Questions No. 1 and 3 are answered by the foregoing paragraph. The Voting Act of 1965 does have an effect upon the local school board election and voter registration. Its effect in Arizona, however, as pointed out, is slight.

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Our answer to Question No. 2 is that the same registration form may be used. When a person demonstrates sixth grade primary schooling, this demonstration replaces the necessity for inquiry into his or her ability to read or understand the Constitution or to write his or her name.

Respectfully submitted,

A handwritten signature in cursive script that reads "Darrell F. Smith". The signature is written in dark ink and is positioned above the printed name.

DARRELL F. SMITH
The Attorney General